

SETTLEMENT AGREEMENT BETWEEN
DEPARTMENT OF ENVIRONMENTAL QUALITY,
WATER QUALITY DIVISION, AND
McMURRY READY MIX

The Wyoming Department of Environmental Quality, Water Quality Division (DEQ/WQD), Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002; and McMurry Ready Mix, P.O. Box 2488, Casper, Wyoming 82602, hereby enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in Notice of Violation (NOV), Docket Number 3980-06, dated November 30, 2006, related to McMurry Ready Mix's South Storage Yard in Casper and to fully and finally resolve without litigation, issuance of an NOV or other enforcement action, the violations alleged in Letters of Violation (LOVs) issued to McMurry Ready Mix on November 20, 2006 for its Forty Rod Road Project and December 6, 2006 for its Paradise Road Project. The NOV and LOVs allege that McMurry Ready Mix failed to install and maintain proper best management practices (BMPs) to control storm water runoff, and failed to keep the storm water pollution prevention plan (SWPPP) current.

WYO. STAT. ANN. § 35-11-901(a)(ii)(2008) authorizes the DEQ/WQD to negotiate stipulated settlements, including payment of a penalty, in lieu of litigation. To that end, McMurry Ready Mix and the DEQ/WQD hereby stipulate and agree as follows:

1. The DEQ, pursuant to WYO. STAT. ANN. § 35-11-104 (2008) is a department in the executive branch of the State government of Wyoming and is principally situated in Cheyenne, Wyoming. DEQ is the agency responsible for administering the Wyoming Environmental Quality Act (Act) including all provisions of the Wyoming Water Quality Rules and Regulations (WWQRR).

2. Since receiving NOV Docket Number 3980-06, LOVs dated November 20, 2006 and December 6, 2006, and through the date of the signing of this Settlement Agreement, McMurry Ready Mix has satisfactorily provided evidence to the DEQ demonstrating that it has taken steps to address the alleged violations covered by the NOV and the LOVs, including implementation of ongoing operational programs to prevent violations in the future.

3. McMurry Ready Mix agrees to pay a penalty of seventeen thousand nine hundred ten (\$17,910.00) dollars and no cents as a settlement to resolve NOV Docket Number 3980-06 and any other violations, concerns, acts or omissions discovered or observed during any and all inspections that led to the issuance of the NOV, related to McMurry Ready Mix's South Storage Yard in Casper. Payment to the DEQ is due and payable within thirty (30) days of the full execution of the Settlement Agreement. Payment to DEQ shall be by check made payable to the "Wyoming Department of Environmental Quality, Water Quality Division," and shall be sent to: Mr. Kevin M. Wells, Compliance & Enforcement Coordinator, Department of Environmental Quality, Water Quality Division, Herschler Building 4th Floor-West, 122 West 25th Street, Cheyenne, Wyoming 82002. The check should reference "NOV Docket Number 3980-06."

4. At the time of the signing of this Settlement Agreement, DEQ/WQD is unaware of and has no notice of any outstanding violations or concerns relating to McMurry Ready Mix's

South Storage Yard site, Forty Rod Road site or Paradise Road site.

5. McMurry Ready Mix's full compliance with the terms of this Settlement Agreement shall constitute satisfaction for all present and future claims by the DEQ against McMurry Ready Mix based on the acts and omissions alleged to be violations in Notice of Violation No. 3980-06. Contingent on McMurry Ready Mix's compliance with the terms of this Settlement Agreement, the DEQ will refrain from taking any further enforcement action against McMurry Ready Mix for these particular alleged acts or omissions, or for any other acts or omissions discovered or observed during any and all inspections that led to the issuance of the NOV.

6. McMurry Ready Mix's full compliance with the terms of this Settlement Agreement shall constitute satisfaction for all present and future claims by the DEQ against McMurry Ready Mix based on the acts and omissions alleged to be violations in the Letter of Violation sent to McMurry Ready Mix on November 20, 2006 for the Forty Rod Road Project. Contingent on McMurry Ready Mix's compliance with the terms of this Settlement Agreement, the DEQ will refrain from taking any further enforcement action against McMurry Ready Mix for these particular alleged acts or omissions, or for any other acts or omissions discovered or observed during any and all inspections that led to the issuance of said LOV.

7. McMurry Ready Mix's full compliance with the terms of this Settlement Agreement shall constitute satisfaction for all present and future claims by the DEQ against McMurry Ready Mix based on the acts and omissions alleged to be violations in the Letter of Violation sent to McMurry Ready Mix on December 6, 2006 for the Paradise Road Project. Contingent on McMurry Ready Mix's compliance with the terms of this Settlement Agreement, the DEQ will refrain from taking any further enforcement action against McMurry Ready Mix for these particular alleged acts or omissions, or for any other acts or omissions discovered or observed during any and all inspections that led to the issuance of said LOV.

8. The Parties intend by this Settlement Agreement to resolve and dismiss with prejudice all allegations that were asserted in NOV Docket Number 3980-06 and any other violations, concerns, acts or omissions discovered or observed during any and all inspections that led to the issuance of the NOV. The Parties intend by this Settlement Agreement to resolve and dismiss with prejudice all allegations that were asserted in the LOV sent to McMurry Ready Mix on November 20, 2006 (Forty Rod Road Project) and any other violations, concerns, acts or omissions discovered or observed during any and all inspections that led to the issuance of said LOV. The Parties intend by this Settlement Agreement to resolve and dismiss with prejudice all allegations that were asserted in the LOV sent to McMurry Ready Mix on December 6, 2006 (Paradise Road Project) and any other violations, concerns, acts or omissions discovered or observed during any and all inspections that led to the issuance of said LOV.

9. McMurry Ready Mix waives any statute of limitations which may apply to an enforcement action by the DEQ/WQD involving the specific matters described in NOV Docket Number 3980-06 in the event that McMurry Ready Mix fails to fulfill its obligations under this Settlement Agreement.

10. Nothing in this Settlement Agreement precludes DEQ/WQD from taking additional enforcement action including the issuance of an NOV, Order, and/or pursuing additional penalties should McMurry Ready Mix violate the Act, applicable rules and regulations, or WYPDES permit requirements in the future.

11. This Settlement Agreement, and any and all actions taken in accordance with its provisions, do not constitute an admission by McMurry Ready Mix to any allegations, findings, determinations or conclusions contained in this Agreement, nor is this a retraction by the DEQ/WQD of the specific allegations in NOV Docket Number 3980-06.

12. McMurry Ready Mix, by entering into this Settlement Agreement, does not concede or admit to any liability in relation to NOV Docket Number 3980-06; the November 20, 2006 LOV sent related to the Forty Rod Road Project; or the December 6, 2006 LOV sent related to the Paradise Road Project. This Settlement Agreement constitutes no admission of fault or noncompliance.

13. Except as specifically provided for herein, nothing in this Agreement shall prejudice, waive, or impair any right, remedy or defense that McMurry Ready Mix may have against any entity.

14. This Settlement Agreement shall be admissible by either Party without objection by the other Party in any subsequent action between these Parties to enforce its terms.

15. Notwithstanding any other language in this Settlement Agreement, the State of Wyoming and DEQ do not waive sovereign immunity by entering into this Settlement Agreement with McMurry Ready Mix and specifically retain all immunity and all defenses available as sovereigns under State and Federal law.

16. Neither Party hereto shall have any claim against the other for attorneys' fees or other costs incurred with the allegations resolved hereby, including costs incurred in the preparation of this Settlement Agreement. Each Party shall bear its own attorney's fees and costs, if any, incurred through the date this Settlement Agreement is signed by both Parties. Each Party assumes the risk of any liability arising from its own conduct. Neither Party agrees to insure, defend or indemnify the other.

17. McMurry Ready Mix and the DEQ agree to comply with and be bound by the terms of this Settlement Agreement, and further agree they will not contest the basis or validity of this Settlement Agreement in any action taken by DEQ to enforce the terms of this Settlement Agreement. This Settlement Agreement is binding upon McMurry Ready Mix, its successors and assigns, and upon the DEQ.

18. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement, and shall inure solely to the benefit of the Parties to this Agreement. The Parties to this Agreement intend and expressly agree that only Parties signatory to this

Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

19. Any changes, modifications, revisions or amendments to this Settlement Agreement which are mutually agreed upon by the Parties shall be incorporated by written instrument, executed and signed by all Parties to this Agreement.

20. The construction, interpretation and enforcement of this Settlement Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Settlement Agreement and the Parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

21. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement. Full execution of this Settlement Agreement shall be determined by the latest date of all Parties signing.

22. This Settlement Agreement is not binding on the Parties until the last signature is affixed hereon.

IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Settlement Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Settlement Agreement.

FOR: McMURRY READY MIX

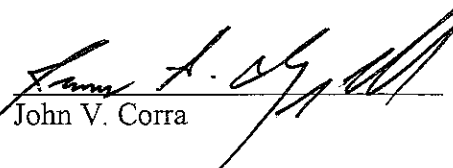
Signed: 

Typed: RON McMURRY

Title: VICE PRESIDENT

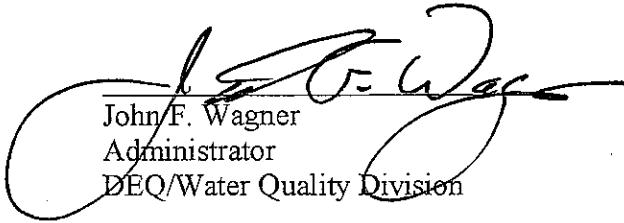
Date: AUGUST 28, 2008

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY


John V. Corra


Date: 9/15/08

Director
Department of Environmental Quality


John F. Wagner
Administrator
DEQ/Water Quality Division

Date: 9/9/08

APPROVAL AS TO FORM


John Burbridge, Senior Assistant Attorney
General
Attorney for DEQ/WQD

Date: 8-25-08